

a Republique Francaise

Carl H. Schultz.

New-York, for the Second Circuit.
Wallace, Circuit Judge:

me of the complainants in the strict legal
use of the term, but is a geographical name

mineral springs at or near Vichy, in the department of Allier, France, to designate the locality of origin and indicate the general characteristics of the waters. The bill can only be maintained upon the theory of unfair competition by the defendants, in applying that name to the artificial mineral water manufactured and

led by them in this country. Canal Co. vs. Clark (13 Wall, 311); Columbia Mill Co. vs. Elk-
rre (150 U. S., 469); The Anheuser-Busch Brew-
ing Association vs. Piza (23 Blatch., 254); New-
man vs. Alvord (51 N. Y., 189); Wotherspoon
vs. Currie (L. R. 5 H. L., 508-513).

For fifty years or more artificial mineral waters approximating more or less closely in their ingredients and properties to the natural mineral water have been prepared and sold by the name of "Vichy" by manufacturers in Europe and in this country. Natural waters lose their original virtues more or less when

their original virtues more or less when removed from their sources, while artificial waters manufactured under pressure of carbonic acid gas remain intact in all their ingredients. Mr. Schultz began the manufacture of artificial water in New-York city in 1862 and from that time until the

present bill was filed, a period of thirty years, continued to make and sell it in large quantities here, advertising it as "Schultz's Vichy Water." The earliest circular to the trade in the record contains this statement: "The mineral waters will be made with the greatest care and

According to the best analyses known, so that they will not differ from the natural springs." As was said of him in a quite similar case by Judge Cox (City of Carlsbad v. Schultz, 78 Fed. Rep. 471), "the case is devoid of any element of actual fraud, and the de-

This product acquired a high reputation for its purity, was prescribed extensively by physicians, and was considered by many to be preferable for therapeutical purposes to the natural waters." It became popular as a beverage, being kept by druggists generally, to

drawn from fountains or syphon bottles and sold by the glass. The labels used by Schultz were widely dissimilar from those used with the natural water. "It is apparent that he was meticulous to have the water identified with his name as its manufacturer; and that so far from

tempting to palm it off upon the public as the natural Vichy water, he sought to commend it as an artificial water, having substantially the same ingredients and properties of the natural water, but of greater excellence and purity than the water made by his competitors.

Assuming that the use of the name "Vichy" in connection with the artificial water made by Schultz may have tended to divert to some extent

If it should be assumed, however, that Schultz's use of the name did tend to some extent to confuse the identity of the two articles

he case presents the question whether, after having used it for nearly thirty years publicly and notoriously, without any interposition on the part of the complainants, the latter can be heard to assert the right to an injunction. It is impossible that the owners of the natural water could not have known that wherever the

would not have known that water was being made extensively sold, artificial waters were being made and sold extensively by the same name. If the artificial waters had been made and sold as purporting to be the natural waters, there would be less equity in the defence of acquiescence; but they were not.

They were made and sold to supply a demand for artificial waters having properties similar to those of the natural water. It is very late to ask the intervention of equity to suppress a course of business which originated innocently and has been so generally adopted. Equity is

disposed to assist parties who have slept upon their rights and acquiesced in their appropriation by others for a great length of time. The unexampled delay and acquiescence in the present case, I think, should defeat the action.

Woodmanse & Hewitt Manufacturing Company
1000 Broadway, New York, N. Y.

Williams (31 U. S. App., 1897).
 vs. Locke (150 U. S., 193); McLaughlin v.
 People's Railway Company (21 Fed. Rep., 574).
 The bill is dismissed with costs.
 (Endorsed).
 United States Circuit Court, Southern District
 of New-York. Second Circuit.—La République

Franchise and Others vs. Carl H. Schultz. Opinion
on, Wallace, C. J.—United States Circuit Court
filed May 23, 1899. John A. Shields, Clerk.
(From the N. Y. Law Journal.)

MOHONK LAKE CONFERENCE.
Mohonk Lake, N. Y., May 31.—The fifth Lake Mohonk Conference for the promotion of international arbitration met at the Lake Mohonk House today. After devotional exercises, led by the Rev. Dr. T. L. Cuyler, Albert K. Smiley delivered a address of welcome. Upon his motion ex-Senate

George F. Edmunds was elected chairman. In his address Mr. Edmunds doubted the immediate outcome of results from the Hague Conference, but considered the triumph of international arbitration inevitable. The following officers were elected: Secretaries, Miss Martha D. Adams and Henry I. Baldwin; Press Committee—Major M. H. Briggs.

A. R. Wales and Mrs. Louisa Houghton, the following Business Committee was appointed: Everett Wheeler, chairman; Professor John B. Clark, W. J. Coombs, John I. Gilbert, C. R. Woodruff, John H. Stines, Robert Treat Paine, Samuel I. Capen, Lyman Abbott, William Hayes Ward and James Wood.

address, emphasizing peace, and insisting that minor differences between nations should be settled by arbitration. Brief addresses were also made by Everett P. Wheeler, V. S. Logan, Edward Atkinson, James Wood, John Gilbert, Robert Treat Faine, Amory Bradford, James M. Ludlow, G. G. Mercer, Julius Dreyer and M. H. Bright.

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